IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.1864 of 2004 (O&M)

Date of decision : 16.10.2006.

Bhushan Pal .....Appellant

versus

Mohan Singh .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Raj Paul Kansal, Advocate for the appellant.
Mr.S.S.Salar, Advocate for the respondent.

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ORDER

HEMANT GUPTA, J. (oral)

C.M.No.7066-C of 2005.

For the reasons mentioned in the application, the order dated 12.4.2005 is recalled. The appeal is restored to its original number.

C.M.No.9445-C of 2006.

CM is allowed. The documents are permitted to be taken on record.

R.S.A.No.1864 of 2004.

The plaintiffs is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby decree for permanent injunction in respect of the alleged passage claimed by the defendant, was declined.

It has been found that previous judgment and decree dated 4.3.1997, Exhibit D-3 and D-4 recognize that there is a passage. Such passage is reflected in the sale deed executed by Kartar Kaur in favour of

the plaintiff in the year 1975 and in favour of the defendant in the year 1976. The said sale deeds were subject matter in the earlier suit wherein right of passage of the defendant was recognized.

Learned counsel for the appellant has vehemently argued that in the sale deed Exhibit DW-4/1, there is interpolation. It is pointed out that in sale deed, the passage described is 4 feet, whereas the Courts below have taken the passage as 4 feet 6 inches. Therefore, on merits, I do not find any illegality or irregularity in the finding recorded by the Courts below which may raise any substantial question of law in the second appeal, for consideration of this Court. However, there seems to be a mistake in describing the passage as 4 feet 6 inches by the Courts below, which should be read as 4 feet. Learned counsel for the defendants has no objection if the clarification as regards width of the passage is concerned, is granted.

The appeal stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

October 9, 2006.

**mohinder*